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S.B. CIVIL MISC. APPEAL NO.1108/2006.
Smt. Varju & Ors. Vs. Jalekhan & Ors.

Date of Order : 19th March 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.C. Bishnoi, for the appellants.
Mr. B.S. Charan, for the respondent No.2.

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BY THE COURT:

For quantification of compensation to be awarded to the wife, two minor children and mother of the vehicular accident victim Durga Ram, about 37 years in age, the Tribunal has noticed the assertion of claimants that the deceased was engaged in the job of a tractor-driver and in agriculture and was earning about Rs.10,000/- per month; but for want of any cogent corroborative evidence, has estimated his income at Rs.3,000/- per month and deducting one-third wherefrom, has taken annual loss of contribution at Rs.24,000/- and with application of multiplier of 16, has assessed pecuniary loss at Rs.3,84,000/-. The Tribunal has further allowed Rs.10,000/- towards funeral expenses, another Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.5,000/- to each of the other claimants towards non-pecuniary loss and in this manner has awarded total

compensation in the sum of Rs.4,19,000/- and has also allowed interest @ 9% per annum from the date of filing of the claim application.

Questioning the award aforesaid as being low and inadequate, it has been contended on behalf of the claimants-appellants that the Tribunal has erred : (i) in applying multiplier of 16 though a multiplier of 17 ought to have been applied; (ii) in not considering that the deceased was the only earning member of the family, earning as a driver and from agriculture, and the estimate as put by the Tribunal at his monthly income only at Rs.3,000/- remains inadequate; (iii) in not considering the evidence led by the claimants that has remained unrebutted; (iv) in not awarding reasonable amount towards hospitalization expenses of the deceased for a day before he expired; and (v) in awarding a little amount on non-pecuniary loss.

Having given a thoughtful consideration to the submissions made by the learned counsel for the appellants and having examined the award in its totality, this Court is of opinion that the award in question cannot be said to be too low or inadequate so as to warrant interference in appeal.

Though it is true that no rebuttal evidence has been led by the non-applicants in relation to the assertion on income as made by the claimants but then, mere

uncontroverted evidence cannot be taken decisive in every case for the purpose of reasonable estimate on the income of the victim. For the quantum of income suggested at Rs.10,000/- per month, it was definitely required of the claimants to have proved the same by some cogent and reliable evidence. It is true that the driving licence of the deceased, licencing him to drive a light motor vehicle and tractor, has been produced on record but merely on its basis, it cannot be said that the income of the deceased ought to be accepted to the extent suggested by the claimants.

Then, the claimants have not produced any evidence in relation to the agricultural land of the deceased so as to consider that to be a definite source of his income. It is noticed from the statements of PW-1 Smt. Varju that she was not being handed over the income by her husband and according to her, the entire income was handed to the her mother-in-law. Then, the said claimant has also pointed out that she was maintaining cattle and working in agriculture. In the first place, there is no evidence in relation to the agriculture income of the deceased and secondly, if at all he was earning from agriculture, for the very nature of source of such income, and for the statement of the claimant No. 1, a part of such income retaining itself to the claimants cannot be ruled out.

In the aforesaid view of the matter, the estimate

as put by the Tribunal on the income of the deceased at Rs.3,000/- per month in relation to an incident of the year 1998 does not appear to be inadequate. Application of multiplier of 16 cannot be said to be incorrect in view of the age of the deceased at about 37 years. The submissions about general damages being on the lower side or about hospitalization expenditure for one day having not been awarded do not appear to be of any substance when it is noticed that the Tribunal has awarded Rs.10,000/- towards funeral expenses and Rs.10,000/- to the wife towards loss of consortium apart from Rs.15,000/- to the other claimants. Moreover, the Tribunal has proceeded to award interest @ 9% per annum from the date of filing of claim application and such rate of interest can also not be said to be inadequate or on the lower side.

In the ultimate analysis, the award as made by the Tribunal in the sum of Rs.4,19,000/- together with interest @ 9% per annum does not appear to be low or inadequate and rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/